

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

EASTERN DIVISION

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

THIS DOCUMENT RELATES TO:

ALL CASES

MDL No. 2804

Case No. 1:17-md-2804

Judge Dan Aaron Polster

**DEFENDANTS' MOTION FOR RECONSIDERATION FOR A COURT REPORTER
FOR THE NOVEMBER 6, 2019 HEARING AND MOTION TO
SUBMIT SELECTIVE REMAND PROPOSALS ON THE PUBLIC DOCKET**

The next steps in these MDL proceedings are important to both the parties and the public.

Accordingly, Defendants respectfully move for reconsideration of the Court's denial of Defendants' motion that the November 6, 2019 conference be conducted on the record and recorded by a court reporter. Dkt. No. 2884, Denied by Non-Document Order, Oct. 31, 2019. Defendants also move to file on the public docket the parties' submissions regarding selective remand of certain cases. The Special Master instructed that these submissions "should be emailed to the special masters and the court, and not filed on the docket."¹

¹ Defendants as used herein includes Cardinal Health, Inc., McKesson Corporation, AmerisourceBergen Drug Corporation, Mallinckrodt LLC and SpecGx LLC, Endo Pharmaceuticals Inc., Endo Health Solutions Inc., Par Pharmaceutical Companies, Inc. and Par Pharmaceutical, Inc., Allergan plc (appearing specially), Allergan Finance, LLC (f/k/a/ Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc.), Allergan Sales, LLC, Allergan USA, Inc., Walgreen Co, and CVS Indiana, L.L.C. CVS Rx Services, Inc., Cephalon, Inc., Teva Pharmaceuticals USA, Inc., Watson Laboratories, Inc., Actavis LLC, Actavis Pharma, Inc. f/k/a Watson Pharma, Inc., Warner Chilcott Company, LLC, Actavis South Atlantic LLC, Actavis Elizabeth LLC, Actavis Mid Atlantic LLC, Actavis Totowa LLC, Actavis Kadian LLC, Actavis Laboratories UT, Inc. f/k/a Watson Laboratories, Inc.-Salt Lake City, Actavis Laboratories FL, Inc., f/k/a Watson Laboratories, Inc.-Florida, Janssen Pharmaceuticals, Inc., Johnson & Johnson, Janssen

For nearly six months, in meetings that Special Master McGovern has held with the various groups within the MDL, he has suggested that a selective remand process of a limited number of cases occur as the next step in the MDL. It was understood that this selective remand process would involve the transferor judge receiving these cases back for discovery, summary judgment, and trial. Such a process made sense because the transferor courts would address issues of law unique to the forum state—a federal judge in Illinois, for example, would address issues of Illinois law. The transferor court could address case-specific discovery appropriate and necessary for the particular case and trial. It is appropriate for case-specific discovery and motion practice to proceed before the transferor courts. This proposal, which Special Master McGovern also referred to as “hub and spoke” remands, would allow the MDL to be maintained (“hub”) while certain cases proceed in the transferor courts (“spokes”).

It was further understood that Plaintiffs were on board with the complete remand of selected matters to the transferor courts. The Court was apprised of this approach and asked the parties to suggest cases to be selectively remanded. Against this backdrop, certain defendants in good faith proposed to Plaintiffs a plan that contemplated the above-described selective remand process: that is, a process whereby the transferor judge received the case back for any further discovery, summary judgment, and trial. At the eleventh hour, Defendants received back from Plaintiffs a plan that bore no resemblance to the selective remand process that Defendants

Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc., H. D. Smith, LLC, H. D. Smith Holdings, LLC (appearing specially), and H. D. Smith Holding Company (appearing specially). Specially appearing defendant Allergan plc, an Irish holding company, expressly reserves all defenses, including related to service and personal jurisdiction.

believed had been agreed to by all. Defendants do not believe that Plaintiffs' plan is a good faith effort to execute on the selective remand process that had been agreed to by all.

Defendants are aware that the Court previously denied a request to conduct the conference on the record, but the Court did not explain its denial, which is contrary to the mandate of 28 U.S.C. § 753(b)(3): "Proceedings to be recorded under this section include ... (2) all proceedings in [non-criminal] cases had in open court unless the parties with the approval of the judge shall agree specifically to the contrary; and (3) such other proceedings . . . as may be requested by any party to the proceeding." *See also United States v. Gallo*, 763 F.2d 1504, 1530 (6th Cir. 1985) (the rules established in that section are "mandatory," and courts have a "duty . . . to meet the Act's requirements"); *United States v. Gennings*, 95 F. App'x 795, 800 (6th Cir. 2004) ("District courts should be cautioned . . . to abstain from violating the clear dictate of 28 U.S.C. § 753(b)."); *City of Pittsburgh v. Simmons*, 729 F.2d 953, 956 (3d Cir. 1984) ("[I]t is always a mistake—and indeed, in light of 28 U.S.C. § 753 and the cases interpreting that statute, it is legal error—for the court to refuse a request that the proceedings be recorded.") (footnote omitted).

On the record proceedings are especially important here where the Court will potentially be deciding the next jurisdictions that may be the subject of discovery in this MDL as well as the process that will be followed in that regard. Given the foregoing and the importance of the issues to be discussed at the November 6 hearing, Defendants respectfully request that the Court reconsider its denial of a court reporter for the hearing. The parties' submissions as to the next steps in this MDL also are important subjects of public interest and should be recorded on the public docket as well.

Dated: November 5, 2019

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Steven M. Pyser, hereby certify that the foregoing document was served via the Court's ECF system to all counsel of record.

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